



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 23 2004

John Morgan

Oxford, MI 48371-1515

RE: MUR 5358

On April 1, 2003, the Federal Election Commission notified you, *via* Jamie Morgan, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you, *via* Jamie Morgan, at that time.

Upon further review of the allegations contained in the complaint the Commission, on June 9, 2004, found that there is reason to believe you knowingly and willfully violated 2 U.S.C. § 434(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

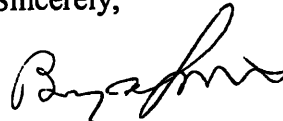
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jack A. Gould, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis
Designation of Counsel form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: John Morgan

MUR: 5358

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Matthew A. Roth, *et al.* See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. The Act¹

The Federal Election Campaign Act of 1971, as amended (“the Act”), requires every political committee to have a treasurer. 2 U.S.C. § 432(a). The treasurer is required to file periodic reports with the Commission disclosing the committee’s receipts and disbursements. 2 U.S.C. §§ 434(a)(1), 434(b). The treasurer, and any other person required to file any report or statement under the Act, is “personally responsible . . . for the accuracy of any information or statement contained in it.” 11 C.F.R. § 104.14(d).

The Act also addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(B). The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). See also *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986) (knowing and willful standard requires knowledge that one is violating the law).

¹ The Federal Election Campaign Act of 1971, as amended (“the Act”), governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 (“BCRA”). All references to the Act and regulations in this Report exclude the changes made by BCRA

1 A knowing and willful violation may be established “by proof that the defendant acted
2 deliberately and with knowledge that the representation was false.” *United States v. Hopkins*,
3 916 F.2d 207, 214 (5th Cir. 1990).

4 **B. Facts and Analysis**

5 Jamie Morgan was a 26-year-old law student when he ran for Congress in 2002.
6 See Response to Complaint (“Response”). Morgan for Congress (“the Committee”) was Jamie
7 Morgan’s principal campaign committee. John Morgan, the Committee’s treasurer, is Jamie
8 Morgan’s brother. *Id.* Jamie Morgan’s campaign received favorable press, including an
9 endorsement by *The Oakland Press*. See Oakland Press Staff, *You’ll be going to the polls*
10 *Tuesday, right?*, The Oakland Press, August 4, 2002. Two weeks before the primary election,
11 Jamie Morgan announced he was withdrawing from the race due to an illness in his family. Lee
12 Dryden, *Illness in family forces candidate for Congress to pull out*, The Oakland Press, July 24,
13 2002.² Because the deadline for withdrawing had passed, Jamie Morgan’s name remained on the
14 ballot and he received 27% of the vote in the three-candidate race for the Republican nomination.
15 See 2002 Official Michigan Primary Election Results – 12th District.

16 Complainants, who are the candidate’s former colleagues at the Oakland County Circuit
17 Court, submitted sworn affidavits in which they aver the Committee’s disclosure reports include
18 inaccurate information regarding campaign contributions and refunds attributed to them. See
19 Complaint. The most egregious example comes from the lead complainant, Matthew Roth, who
20 averred that he contributed no money to the candidate and yet the Committee reported that he
21 contributed \$2,000. *Id.* at 3. The following chart compares what the Committee reported in its

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April 15 Quarterly Report of Receipts and Disbursements (April 15, 2002) ("Q1 Report") and July 15 Quarterly Report of Receipts and Disbursements (July 16, 2002) ("Q2 Report") with what the complainants say they contributed.

Contributor	Committee Reports	Complainant Affidavit
Callaghan, Sean	\$700	\$25
Danou, Jessica	\$2,000	\$200
Davis, Justin	\$1,900	\$100
Horenstein, Joseph	\$2,000	\$25
Matthews, Cheryl	\$100	\$25
McDonald, Timothy ³	\$2,000	\$100
Roth, Matthew	\$2,000	\$0

Q1 Report

John Morgan signed and filed the Committee's Q1 Report. *See* Q1 Report (April 15, 2002). The Q1 Report, which was handwritten, disclosed total contributions in the amount of \$11,300. Based on the complainants' affidavits, it appears that John Morgan inflated the contributions made by Sean Callaghan, Joseph Horenstein, Cheryl Matthews, and Timothy McDonald, and created a fictitious contribution in Jennifer McDonald's name. *See* Complaint at 4 – 7.

² Jamie Morgan indicated that his decision to withdraw from the race was based on the problems with the disclosure reports, which he did not want to answer for on the campaign trail, as well as his mother's illness

³ The Committee also reported that Timothy McDonald's wife, Jennifer, contributed \$2,000. According to Timothy McDonald, he and his wife made a single contribution in the amount of \$100. *See* Complaint at 5.

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Contributor	Q1 Report	Complainant Affidavit
Callaghan, Sean	\$200	\$25
Horenstein, Joseph	\$100	\$25
Matthews, Cheryl	\$100	\$25
McDonald, Timothy	\$200	\$100
McDonald, Jennifer	\$200	\$0

The report attracted the attention of the Commission's Reports Analysis Division ("RAD") because, among other things, the Committee used the box labeled "Amount of Each Receipt this Period" in Schedule A of the report to create a running total for the receipts received during that period. Accordingly, on July 10, 2002, RAD sent a request for additional information to the Committee's treasurer.

Five days later, Jamie Morgan called the FEC and asked how to enter a check that was designated for both elections (i.e. \$2,000 designated for both primary and general).

Q2 Report

The following day, John Morgan electronically filed the Committee's Q2 Report, which disclosed total contributions in the amount of \$254,200, including eighty-one (81) \$2,000 contributions. *See* Q2 Report (July 16, 2002). In the Q2 Report, six complainants are identified as having made contributions. According to their affidavits, however, none of them contributed to the Committee during that reporting period. *See* Complaint at 2-6, 8.

Contributor	Q2 Report	Complainant Affidavit
Callaghan, Sean	\$500	\$0
Danou, Jessica	\$1,800	\$0

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Davis, Justin	\$1,800	\$0
Horenstein, Joseph	\$1,900	\$0
McDonald, Timothy ⁴	\$1,800	\$0
Roth, Matthew	\$2,000	\$0

Moreover, given the inaccurate information reported in reference to the complainants' contributions, it is likely that the Q2 Report, which disclosed \$199,800 in itemized contributions from 116 contributors, contains other fictitious contributions.

Amended Q1 Report

The Amended Q1 Report was signed and filed by John Morgan on August 8, 2002 in response to RAD's July 10, 2002 letter. Although the Amended Q1 Report corrected the technical problems outlined in the letter, the inflated and fictitious contributions were included in the total contributions (\$11,300) reported. *See* Amended Q1 Report (August 8, 2002) at 3.

III. CONCLUSION

Because it appears that John Morgan acted deliberately and with knowledge that the contribution amounts in the Q1, Q2, and Amended Q1 Reports were false, there is reason to believe John Morgan knowingly and willfully violated 2 U.S.C. § 434(b).

⁴ Jennifer McDonald is also identified as contributing \$1,800 during the Q2 reporting period; however, she and her husband made only a single \$100 contribution during the Q1 reporting period. *See* Complaint at 5.